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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,210	01/16/2007	William N. Gregg	2926PCTUS(203-3805PCTUS)	7313
96039 7590 02/02/2011 TYCO Healthcare Group LP Attn: IP Legal 5920 Longbow Drive Mail Stop A36 Boulder, CO 80301-3299				
EXAMINER SCOTT, AMANDA L				
ART UNIT 3739		PAPER NUMBER		
NOTIFICATION DATE 02/02/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ebd.iplegal@covidien.com

Office Action Summary

Application No.

10/573,210

Applicant(s)

GREGG ET AL.

Examiner

Amanda Scott

Art Unit

3739

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-912)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Christopherson (US 2002/0058933).

Regarding claim 1, Christopherson discloses a temperature monitoring circuit comprising: at least one temperature sensor (thermocouples 80) for sensing a temperature at a measuring point; a first temperature measurement circuit coupled to the at least one temperature sensor for generating a first temperature value; a second temperature measurement circuit coupled to the at least one temperature sensor for generating a second temperature value (circuit 76 can comprise a double circuit); and a control(20) circuit for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold [Para 0085] and wherein the control circuit (20) is configured to control the overall function of the power source [Para 0075].

With regard the statement of intended use and other functional statements, *for*, they do not impose any structural limitations on the claims distinguishable over Christopherson which is capable of being used as claimed if one so desires to do so. *In*

re Casey, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 2, 9 and 21, Christopherson discloses the temperature monitoring circuit as in claim 1, 8 and 19, wherein, if the difference is greater than the first predetermined threshold, the control circuit generates a warning signal [Para 0091-0095].

Regarding claims 3, 12 and 24, Christopherson discloses the temperature monitoring circuit as in claim 1, 8 and 19, wherein the control circuit is adapted to compare the difference to a second predetermined threshold and, if the difference is greater than the second predetermined threshold, the control circuit generates an alarm signal [Para 0091-0095].

Regarding claims 4, 15 and 27, Christopherson discloses the temperature monitoring circuit as in claim 1, 8 and 19, wherein the control circuit is adapted to compare the difference to a second predetermined threshold and, if the difference is greater than the second predetermined threshold, the control circuit shuts down a power source [Para 0091-0095].

Regarding claims 5 and 16, Christopherson discloses the temperature monitoring circuit as in claim 1 and 8, wherein the at least one temperature sensor is at least one of a thermocouple; thermistor and resistance temperature detector (80 is a thermocouple).

Regarding claims 6 and 17, Christopherson discloses the temperature monitoring circuit as in claim 1 and 8, wherein the control circuit is at least one of a microprocessor, field-programmable gate array and programmable logic device (20 is a microprocessor).

Regarding claims 7 and 18, Christopherson discloses the temperature monitoring circuit as in claim 1 and 8, further comprising a second temperature sensor coupled to the second temperature measurement circuit (80 discloses thermocouples and would therefore have more than one thermocouple).

Regarding claim 8, Christopherson discloses an electrosurgical generator comprising: a radio frequency (RF) output circuit for outputting RF energy (96); a control circuit (20) for controlling the output of the RF output circuit; and a temperature monitoring circuit comprising: at least one temperature sensor (80) for sensing a temperature at a measuring point; a first temperature measurement circuit coupled to the at least one temperature sensor for generating a first temperature value; a second temperature measurement circuit coupled to the at least one temperature sensor for generating a second temperature value(circuit 76 can comprise a double circuit); and a control circuit (20) for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold [Para 0085], wherein the control circuit(20) is configured to control the overall function of the electrosurgical generator [Para 0075].

With regard the statement of intended use and other functional statements, *for*, they do not impose any structural limitations on the claims distinguishable over

Christopherson which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 10, 13, 22 and 25, Christopherson discloses the electrosurgical generator as in claim 8 and 19, further comprising a display for displaying the warning signal and alarm signal [Para 0091-0095].

Regarding claims 11, 14, 23 and 26, Christopherson discloses the electrosurgical generator as in claim 8 and 19, further comprising an audio output for audibly producing the warning signal [Para 0091-0095].

Regarding claim 19, Christopherson discloses an electrosurgical system comprising: an electrosurgical generator (18) for outputting radio frequency (RF) energy; an electrosurgical instrument (26) coupled to the electrosurgical generator for applying the RF energy to an operative site; and a temperature monitoring circuit comprising: at least one temperature sensor (80) for sensing a temperature at a measuring point; a first temperature measurement circuit coupled to the at least one temperature sensor for generating a first temperature value; a second temperature measurement circuit coupled to the at least one temperature sensor for generating a second temperature value (circuit 76 can be a double circuit); and a control circuit(20) for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold [Para 0085], wherein the

control circuit (20) is configured to control the overall function of the electrosurgical generator [Para 0075].

With regard the statement of intended use and other functional statements, *for*, they do not impose any structural limitations on the claims distinguishable over Christopherson which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 20, Christopherson discloses the electrosurgical system as in claim 19, wherein the electrosurgical instrument comprises as least one end effector member and the at least one temperature sensor is located in the at least one end effector member (view figure 3, surgical instrument 26 comprises thermocouple 74).

Regarding claim 28, Christopherson discloses a method for controlling an electrosurgical system, the method comprising the steps of: reading a first temperature value at an operative site via a first temperature circuit (circuit 76 can operate as a double circuit) operably associated with an electrosurgical system including an electrosurgical generator (18); reading a second temperature value at the operative site via a second temperature circuit operably associated with the electrosurgical system; determining a difference of the first and second temperature values via a control system (20) operably associated with the electrosurgical system, wherein the control circuit is configured to control the overall function of the electrosurgical generator (18);

determining if the difference is greater than a first predetermined threshold, wherein when the difference is greater than the first predetermined threshold, generating a warning signal [Para 0085 and 0091-0095].

Regarding claim 29, Christopherson discloses the method as in claim 28, further comprising the step of, wherein when the difference is greater than a second predetermined threshold, generating an alarm signal [Para 0091-0095].

Regarding claim 30, Christopherson disclose the method as in claim 28, further comprising the step of shutting down the electrosurgical system when the difference is greater than a second predetermined threshold [Para 0091-0095].

Response to Arguments

Applicant's arguments filed 11/12/2010 have been fully considered but they are not persuasive. With respect to independent claims 1, 8, 19 and 28, the applicant argues that Christopherson does not disclose that circuit 76 controls overall functions of a generator. The examiner agrees. **Circuit 76** is used to show the temperature measurement circuit. The **control circuit** is defined as **20**. Christopherson discloses a control circuit that controls the generator which is discussed in [Para 0075]. The independent claims all claim "a **control circuit** for determining a difference between the first and second temperature values and for comparing the difference to a first predetermined threshold," the newly added limitation is "wherein the **control circuit** is configured to control the overall function of the power source". As disclosed above in the current rejection and the non final rejection dated 08/13/2010, the control circuit is

denoted as 22 from Christopherson. The circuit argued by the Applicant denoted as 76 is clearly directed towards the temperature measurement circuits. Therefore the rejection is maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Scott whose telephone number is (571)270-7103. The examiner can normally be reached on Monday thru Thursday, 8:00 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./
Examiner, Art Unit 3739

/Linda C Dvorak/
Supervisory Patent Examiner, Art
Unit 3739